

MARY ANN SMITH
Deputy Commissioner
MIRANDA LEKANDER
Assistant Chief Counsel
LINDSAY B. HERRICK (State Bar No. 224986)
Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 445-3682
Facsimile: (916) 445-6985
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRD NO.: 138425
THE COMMISSIONER OF BUSINESS)	STATEMENT OF FACTS IN SUPPORT OF
OVERSIGHT,)	ORDER TO DISCONTINUE VIOLATIONS
Complainant,)	PURSUANT TO CORPORATIONS CODE
)	SECTION 25249
v.)	
JMR CAPITAL MANAGEMENT, INC.,)	
Respondent.)	

The Commissioner of Business Oversight (Commissioner) finds as follows:

I.

INTRODUCTION

1. Respondent JMR Capital Management, Inc. (JMR Capital) is an investment adviser licensed by the Commissioner on June 14, 1994 pursuant to the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.). JMR Capital's principal place of business is 44 Montgomery Street, Suite 3705, San Francisco, California 94104.

II.

STATEMENT OF FACTS

2. On or about April 4, 2016, the Commissioner commenced a regulatory examination (2016 examination) of JMR Capital's books and records which revealed that JMR Capital continued to commit violations previously discovered during regulatory examinations in or about July 1996 (1996 examination) and February 3, 2003 (2003 examination), including failure to maintain books and records in violation of California Code of Regulations, title 10, section 260.241.3, and failure to file annual reports with the Commissioner in violation of California Code of Regulations, title 10, section 260.241.2. In addition, JMR Capital failed to make, keep and submit documents for the specified time period required by the Commissioner in violation of Financial Code section 25241.

A. Books and Records Violations

3. During the 2016 examination, JMR Capital was asked to provide financial books and records for the periods of January through December 31, 2015 and for January through February 29, 2016, as well as investment advisory agreements and other firm documents. The books and records revealed that JMR Capital did not maintain a general ledger during this period of time.

4. Corporations Code section 25241 states in pertinent part:

(a) Every broker-dealer and every investment adviser licensed under Section 25230 shall make and keep accounts, correspondence, memoradums, papers, books, and other records and shall file financial and other reports as the commissioner by rule requires...

5. California Code of Regulations, title 10, section 260.241.3 states in pertinent part:

(a) Every licensed investment adviser shall make and keep true, accurate and current the following books and records relating to such person's investment advisory business:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
...

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.
...

1 6. On April 12, 2016, a three-day field examination was commenced at JMR Capital's
2 office in San Francisco, at which time, a second request was made for JMR Capital's general ledger.
3 JMR Capital responded that it would attempt to obtain a general ledger and make it available the
4 following day. On April 13, 2016, a third request was made to JMR Capital for its general ledger,
5 which responded saying it was not available for examination. On April 14, 2016, JMR Capital was
6 asked again if its general ledger was available. JMR Capital stated that its accountant had set up a
7 QuickBooks ledger which could be provided. No general ledger, however, was provided during the
8 three-day field examination.

9 7. Because no general ledger was provided, the Commissioner was unable to verify the
10 accuracy of JMR Capital's financial books and records. For example, the information provided in
11 JMR Capital's income statement and balance sheet could not be confirmed or traced to the general
12 ledger. In addition, assets reported in JMR Capital's February 29, 2016 balance sheet were not
13 reflected in its February 2016 bank statement, and a variance of approximately \$10,200 between the
14 balance sheet and bank statement could not be explained by a reconciliation. As such, JMR Capital
15 also did not maintain or submit true or accurate cash reconciliations.

16 8. JMR Capital's failure to maintain a general ledger for years 2015 and 2016 are repeat
17 violations discovered during the 2003 examination. In a regulatory report dated June 30, 2016 (2016
18 regulatory report), JMR Capital was asked to submit a general ledger for the period of January 1 to
19 May 31, 2016 and to explain why corrective action had not been implemented as indicated in its
20 response to the 2003 examination. In addition, JMR Capital was asked to provide the cash
21 reconciliation, balance sheet and bank statement for the month ending May 31, 2016. JMR Capital
22 was instructed again in the 2016 regulatory report that its books and records are required to be
23 maintained on a current and accurate basis.

24 B. Annual Report Violations

25 9. The 2016 examination also revealed that JMR Capital failed to file annual reports for
26 the fiscal years ending December 2005 to December 2014. A copy of JMR Capital's annual report
27 for 2015 was provided during the 2016 examination.

28 10. California Code of Regulations, title 10, section 260.241.2 states in pertinent part:

(a) General Rule. Subject to the provisions of subsection (c) of this section, every licensed broker-dealer, and every licensed investment adviser subject to the provisions of Section 260.23.2 of these rules, shall file an annual financial report as follows:

...

(2) The annual report for an investment adviser shall contain a balance sheet, income statement, and computations of the minimum financial requirements required under Section 260.237.2 of these rules.

...

(4) The report shall be filed not more than 90 days after the investment adviser or broker-dealer's fiscal year end.

(5) Whenever the Commissioner so requires, a financial report shall be filed as of the date, and within the period, and in the form specified in the Commissioner's request. The Commissioner may require the financial report to be audited.

...

11. JMR Capital's failure to file an annual report is a repeat violation discovered in the 1996 examination and 2003 examination. JMR Capital was instructed in the 2016 regulatory report that annual reports are required 90 days after its fiscal year-end and was asked to explain why corrective action had not been implemented as indicated in its response to the 2003 examination.

III.

ORDER TO DISCONTINUE VIOLATIONS

12. JMR Capital's violations of the CSL found by the Commissioner support the issuance of an order to directing JMR Capital to discontinue committing violations. Corporations Code section 25249 states:

If, after examination or investigation, the commissioner has reasonable grounds to believe that any broker-dealer or investment adviser has violated any law or rule binding upon it, the commissioner shall, by written order addressed to the broker-dealer or investment adviser, direct the discontinuance of the violation. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 25251.

13. Corporations Code section 25251 states in pertinent part:

(a) No order issued pursuant to Section 25249 or 25250 may become final except after notice to the affected broker-dealer or investment adviser of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the broker-dealer or investment adviser that upon receiving a request the matter shall be set for hearing to commence within 15 business days after receipt of the request. The broker-dealer or investment adviser may consent to have the hearing

commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without a hearing and the broker-dealer or investment adviser shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the conclusion of the hearing, it appears to the commissioner that the broker-dealer or investment adviser is conducting business in an unsafe and injurious manner or is violating any law of this state, or any rule binding upon it, the commissioner shall make the order of discontinuance final and the broker-dealer or investment adviser shall immediately discontinue the practices named in the order.

(b) The broker-dealer or investment adviser may within 10 days after an order is made final commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the broker-dealer or investment adviser shall comply with the order.

IV.

CONCLUSION

14. By reason of the foregoing, JMR Capital's violations of Corporations Code section 25241, subdivision (a), and California Code of Regulations, title 10, sections 260.241.2 and 260.241.3 found by the Commissioner are grounds to issue an order to JMR Capital to discontinue violations.

WHEREFORE, pursuant to Corporations Code section 25249, the Commissioner hereby gives notice to JMR Capital of her intention to make the Order to Discontinue Violations final.

Dated: October 20, 2017
Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____

Lindsay Herrick
Counsel